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REMARKS

The Examiner has rejected Claims 1-4, 6-8, 10-17, and 20-22 under 35 U.S.C.
102(e) as being anticipated by Conklin et al. (USPN 5,991,881). Applicant respectfully
disagrees with this rejection, especially in view of the amendments made hereinabove.

Specifically, in the latest action, the Examiner equates applicant's claimed
"accounting information" to include the attack data shown in Figure 7. See below.
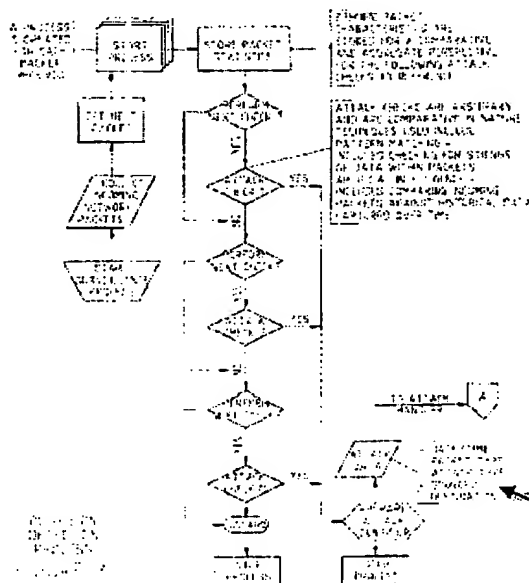
The Examiner continues by presenting the following argument with respect to
applicant's claimed "discarding at least a portion of the accounting information that
occurs during a surge in network traffic, based on the monitored aspect."

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Conklin allegedly teaches: "(i.e., network traffic measurement and
monitoring for reporting information about captured packets and
detecting intrusion into the network and into computers connected
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to the network for denial of service) [see Abstract and Figs. 6-9 and Col. 1, Line 10 - Col. 2, Line 41.]"

However, even if the Examiner's statement is true (i.e. that Conklin suggests network traffic measurement and monitoring for ...), the Examiner has still not shown how Conklin meets applicant's claimed "discarding at least a portion of the accounting information that occurs during a surge in network traffic, based on the monitored aspect."

Specifically, the Examiner has not shown how the attack data (which the Examiner relies on to meet applicant's claimed "accounting information") is discarded when such attack data occurs during a surge in network traffic, based on the monitored aspect.

Again, the only context in which Conklin even suggests any sort of discarding of data is in the following excerpt:

> "If, there is no indication of an actual or potential intrusion, then the examined packet data is discarded. When a packet or accumulation of packets match a predefined intrusion profile the Intrusion Detection function identifies the network traffic as a reportable activity will construct a data structure which contains a date/time stamp indicating the time of detection, the source and destination Internet Protocol (IP) addresses, an assigned message identifying the event detected. This data structure is passed to the Alert Notification function for processing." (see col. 5, lines 23-32)

Thus, while applicant teaches and claims discarding accounting information when such accounting information occurs during a surge in network traffic (which may or may not be resulting from an attack), Conklin discards packet data when there is no indication of an actual or potential intrusion. Thus, not only do Conklin's teachings fail to meet applicant's claims, but Conklin *teaches away* from applicant's claimed invention, thus further rendering it *unobvious*.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a

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single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628,
631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be
shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor
Co.* 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be
arranged as required by the claim.

This criterion has simply not been met by the Conklin reference, as noted above.
Nevertheless, despite these paramount differences and in the spirit of expediting the
prosecution of the present application, applicant has amended each of the independent
claims to include the following or similar subject matter:

> "after receiving the accounting information, discarding at least a portion of
> the accounting information that occurs during a surge in network traffic, based on
> the monitored aspect;
>> wherein the portion of the accounting information is discarded to prevent
> an overload of subsequent processing" (emphasis added).

To this end, applicant now emphasizes the advantage of the presently claimed
invention, namely the discarding of accounting information, as claimed, for the specific
purpose of preventing an overload of subsequent processing. Again, Conklin discards
when there is no attack and associated surge, while applicant discards, as claimed, for the
purpose of preventing an overload of subsequent processing. A notice of allowance or a
specific prior art showing of each of the foregoing limitations, along with the remaining
claim elements, is respectfully requested.

To even further emphasize such distinction, applicant has further amended Claim
11, as follows:

> "computer code for discarding at least a portion of the accounting
> information that occurs during a surge in network traffic and is expendable, based
> on the monitored aspect, after receiving the accounting information;

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computer code for allowing at least a portion of remaining accounting
information to pass to subsequent accounting processing, after receiving the
accounting information

wherein the portion of the accounting information is discarded to prevent
an overload of the subsequent accounting processing (emphasis added).

Thus, in the present claim, it is further emphasized that expendable information is
discarded, while at least a portion of remaining accounting information is allowed to pass
to subsequent accounting processing. Again, a notice of allowance or a specific prior art
showing of each of the foregoing limitations, along with the remaining claim elements, is
respectfully requested.

Even still, to even further distinguish applicant's claimed invention, applicant has
further amended Claim 20, as follows:

"logic for aggregating at least a portion of the accounting information prior
to passing to subsequent accounting processing, based on the monitored aspect,
after receiving the accounting information;

logic for allowing at least a portion of remaining accounting information
to pass to the subsequent accounting processing, after receiving the accounting
information;

wherein the portions of the accounting information are discarded and
aggregated to prevent an overload of the subsequent accounting processing;

wherein the subsequent accounting processing includes operation and
business support system processing. (emphasis added).

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In the present claim, it is further emphasized that an aggregation function is implemented in combination with the discarding to prevent an overload of subsequent accounting processing. The instant claim further emphasizes the fact that the subsequent accounting processing includes operation and business support system processing. Yet again, a notice of allowance or a specific prior art showing of each of the foregoing limitations, along with the remaining claim elements, is respectfully requested.

It is further noted that the Examiner's application of the prior art to the remaining claims is replete with deficiencies. Just by way of example, with respect to Claims 3 and 13, the Examiner continues to rely on Figure 6 to make a prior art showing of appellant's claimed "wherein the accounting information is discarded for dealing with heavy network traffic." After careful of Figure 6, it clearly fails to disclose, teach or even suggest such limitations. Again, Conklin deals with network attacks, not "dealing with heavy network traffic," by discarding accounting information, as claimed.

With respect to Claims 4 and 14, the Examiner relies on col. 4, line 52 – col. 5, line 45 to make a prior art showing of appellant's claimed "generating a summary of the accounting information." Such excerpts, however, do not disclose, teach or even suggest "accounting information", let alone "generating a summary of the accounting information," as claimed.

Regarding Claims 7 and 16, the Examiner relies on col. 4, line 52 – col. 5, lines 30-67; and Figures 6-8 to make a prior art showing of appellant's claimed "wherein monitoring the at least one aspect of the received accounting information includes monitoring a rate of receipt of the accounting information." Such excerpts, however, do not disclose, teach or even suggest "a rate of receipt of the accounting information." Instead, there is a mere mention of a time of day, number and types of packets, common destination/source address combinations, etc. A number of packets constitutes an amount, not a "rate," as claimed.

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With respect to Claims 8 and 17, the Examiner relies on col. 4, line 52 – col. 5, lines 30-67; and Figures 6-8 to make a prior art showing of appellant's claimed "wherein monitoring the at least one aspect of the received accounting information includes one asp detecting whether the rate of receipt of the accounting information exceeds a predetermined amount." Such excerpts, however, do not even disclose, teach or suggest "a rate of receipt of the accounting information." Instead, there is a mere mention of a time of day, number and types of packets, common destination/source address combinations, etc. It is noted that Conklin does not even suggest a "rate," let alone "detecting whether the rate of receipt of the accounting information <u>exceeds a predetermined amount</u>," as claimed.

Regarding Claims 9 and 19, such subject matter is rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin et al. (USPN 5,991,881) in view of Trcka et al. (USPN 6,453,345). With respect to such claims, the Examiner relies on col. 21, lines 24-28 to make a prior art showing of appellant's claimed "wherein monitoring the at least one aspect of the received accounting information includes monitoring a load on a system receiving the accounting information." It appears that the Examiner has again not taken into consideration the full weight of appellant's claims.

Specifically, such excerpt simply suggest "peak loads," but does not disclose, teach or even suggest monitoring a load <u>on a system receiving accounting information</u> in the specific context of "monitoring the at least one aspect of the received accounting information includes monitoring a load on a system receiving the accounting information," as opposed to *the traffic itself.*

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the

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claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the Examiner's proposed combination does not disclose, teach or suggest appellant's claim language, as set forth hereinabove.

A notice of allowance or a specific prior art showing of each of the foregoing limitations, along with the remaining claim elements, is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is hereby authorized to charge any fees that may be due or credit any overpayment to Deposit Account No. 50-1351 (Order No. XACTP001).

Respectfully submitted,

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